



# GOVERNANCE OF INTER - STATE RIVER WATERS IN THE PERSPECTIVES OF FEDERAL PRINCIPLE IN INDIA

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## ABSTRACT

India is a Union of state and federal country. In order to maintain successful federalism, it is necessary to maintain friendly relationship among member States. Post Constitution and after the State reorganization, the river flows from more than one State becomes inter – State river. The river water is always in the state of flow, therefore, no one can claim right over the flowing water. In a case, where any upstream State extracts every water available in the territory, there may exist dispute between States. Therefore, to have disputes, in relation to the sharing of waters of the inter – State river are not advisable in the federal country. So, co-operative federalism is required to be adopted. The principle of equitable apportionment must be implemented, irrespective of any prevailing situation of upstream State. Water is a subject matter under the State list, subject to, intervention by the Parliament, who can declare, the CG shall control the regulation and development those rivers which flows from more than one State in the interest of public. The Constitution plays a significant role in maintaining federalism successfully. In this event, it has empowered the Parliament to make laws in order to provide forum for adjudication in respect of resolving disputes of sharing of inter State river waters between the States. The forum constituted for resolving disputes have given power of the Civil Court under the Code of Civil Procedure and the award passed by them has equal footing as of the decree passed by the Supreme Court.

**KEYWORDS:** Inter State River, Federal Principle, Adjudication, Water Tribunal.

## 1. INTRODUCTION:

Water is one of the important substance, required for the survival of every living organism. It is one of the natural resource. Rain is the basic source of water.<sup>1</sup> It keeps on renewing it self naturally, through hydrologic cycle, i.e. continuous cycle of evaporation, condensation, precipitation and infiltration, etc..<sup>2</sup> When the rain water falls on the earth, the natural drainage drives it away with the help of gravity, called surface run-off. By this natural drainage, when the water stream becomes larger in size and flows away by means of a river.

The total estimated quantum of water available on the earth is about 1386 Million cubic kms. However, the availability of the water on the earth is in following manner:

- i. 97% is locked up into the Ocean and Seas, which is not suitable for, either, human consumption, industrial or agricultural, due to its salty state. This can be used only for salt manufacturing;
- ii. 2 to 3% is locked up into glaciers and polar ice caps; and
- iii. less than 1% is fresh water, which is suitable for, either, human consumption, or industrial or agricultural purpose. Therefore, the fresh water need to conserve and to be exploited sustainably and must use water resources equitably and economically.

Because of, water is the natural resource, no individual can claim their ownership over it. It is to be taken as the property of the nation.<sup>4</sup> Such water must be equitably distributed in order to achieve the objectives enshrined in the Constitution i.e. socio – justice, economic - justice and political – justice. Therefore, the principle of equitable apportionment must be adopted in fair and impartial manner. The principle is that, no one can claim its ownership over natural resources. Water is the natural resources, so as the river water. Therefore, no one can claim absolute right over the river waters which is in flowing state.<sup>5</sup> The river travels from more than one States may be called as inter – State river. India is blessed with number of inter – State rivers and valleys.<sup>6</sup>

India, with a background of rich natural resources, consisting of number of rivers flowing within its territory. Inter – State river is a stream, which is a body of water, which flows in the river form, from the territory of more than one State. In order to consider the sharing of river waters, it is necessary to consider the concept of river basin which includes its tributaries.<sup>7</sup> After the Constitution came into force with effect, India, that is Bharat became the Union of States.<sup>8</sup> In the year 1956, Government of India carried out State reorganization. The territory of India has been divided into number of States. The States were divided by political boundaries. This was carried out on the linguistic basis as well as administrative convenience.<sup>9</sup> Accordingly, new States came in existence, which invited issues and conflicts among the States, including sharing of inter – State river waters.

When a river crosses political boundary and flows into another State, then sharing of its water becomes a matter of conflict. The conflict arises when upstream State consumes maximum available water within their territory without consid-

ering the requirement of the downstream State. When upstream State uses maximum water, it can be interpreted as good as denial of right to use of water of downstream State. It means that denial of fundamental right. According to the Supreme Court right to water has been brought under right to life under Article 21 of the Constitution.<sup>10</sup> When one State affirms a right and another denies it, there arises dispute. The dispute may involve in relation to, the allocation of water between States, excess withdrawal of water by upstream State, violation of any terms and conditions of an agreements, non implementation of award made after adjudication by the tribunal, etc..

## 2. GROWTH OF INTER STATE RIVER LAWS IN THE PERSPECTIVE OF FEDERAL PRINCIPLE:

Under the federal concept, power is divided between two governments i.e. the Central Government and the Regional Government. These two governments are independent, each, within its sphere. Basically, it is a kind of government where the power is distributed among governments. The essential feature of federal principle is that there require two level of governance. In India there are two governments, one at centre and another at State. Both the governments are independent having separate jurisdiction, powers and duties within their battery limits. Even though they are separate within their limit, there is every possibility of dispute may arise in regards to the sharing of inter – State river waters. Hence, there require machinery to resolve the dispute.

Federalism is in contrast with a Unitary government. In the Unitary system, the entire power is in the hands of central government. Whereas, in federal system the power is in the hands of central government, as well as regional governments. As we know, India is blessed with number of inter- State rivers. Its water is always in state of flow. The adopted principle internationally is that, no one can claim exclusive right over the flowing water, and hence on river. The State has no right to claim over the water as its absolute right. Therefore, the inter State river water must be apportioned equitably.

India is a Union of State and required to be maintained and developed amicable relationship with each other. Therefore, co-operative federalism is preferred over competitive federalism. It is necessary to achieve unity in diversity with the assistance of Constitutional device in order to achieve the objectives in the national interest. But, before the researcher refers the Constitution of India, let us see some of the provisions pre independence.

## 3. POSITION PRE INDEPENDENCE:

Prior to the year 1919, the work in relation to the irrigation were under the Government of India. This power was in respect of those projects with an amount not exceeding Rs. 10 lakhs.<sup>11</sup> The G.o.I. would plan its irrigation work up to the estimated cost upto Rs. 10 lakhs, without approval of the Secretary of State. However, if the project cost exceeds Rs. 10 lakhs, then, there were necessary to seek sanction from the Secretary of State.<sup>12</sup> After the receipt of the sanction from the Secretary of the State, it is the responsibility of the Provincial Government to execute such projects.

## 4. THE GOVERNMENT OF INDIA ACT, 1919.:

The G.o.I. Act of 1919 introduced Diarchy system in India. According to this,

the Act recognized first time two governments for its governance. The two governments are a Government at Centre level and another at Province. The main purpose of the introduction of two governments to promote local people in the administration of the Country. Therefore, this Act had divided the subjects matters between these two governments. The legislative power were divided between these two governments. Both the governments were empowered to make laws within their territorial jurisdiction. Accordingly, they know their limits under which they should act for. Under this Act, the water supply for domestic use, irrigation, canals, etc.. were the provincial subject. But, if the matter is of inter – provincial interest, then law made by the Central Legislature would prevail over the provincial law. Therefore, the irrigation was made as "Reserved subject" under G.o.I. Act, 1919.<sup>13</sup>

### 5. THE GOVERNMENT OF INDIA ACT, 1935.:

When the G.o.I. Act of 1935, came into force, it changed the scenario. The system existed prior to this Act was changed. The irrigation subject was brought within the competence of the Province.<sup>14</sup> Position prior to this Act was, that, the subject matters were not wholly within the competence of the Province. Part V of the Act provides the Legislative Powers, whereas chapter I, from Sections 99 to 107 provides the distribution of powers between Federal and Provincial Legislatures. Section 99 provides the extent of Federal and Provincial Laws by which both the legislatures had empowered to make laws to the extent for the whole or any part of British India. Section 100 provides the subject matters of Federal and Provincial Laws. It exclusively empowered Federal Legislatures to make laws on those subject matters enumerated in List I of the Schedule VII. Whereas, the Provincial Legislatures were exclusively empowered to make laws on those subject matters enumerated in List II of the Schedule VII and both the Legislatures of Federal as well as Provincial were empowered to make laws on those subjects enumerated in the List III of the said Schedule. As regards to the 'water' as the subject matter enumerated in the Entry No. 19 of the List II.<sup>15</sup> It means that the Provincial Governments were empowered to make laws on water as mentioned in Entry No. 19.

### 6. POST CONSTITUTIONAL PERIOD : RELEVANT PROVISIONS AND LEGISLATIONS FLOWN FROM THE CONSTITUTION:

India is a Union of States and maintains co-operative federalism. When the river becomes inter State, there is every possibility that conflicts may arise in relation to the sharing of inter State river waters. Therefore, there must be machinery exist to adjudicate the dispute between the States. The Indian Constitution is legal as well as social document. It is the supreme law of the land. It has enumerated the objectives to be achieved by the Governments. The objectives are the socio – justice, economic – justice and political – justice.<sup>16</sup> Therefore, it is the duty of every Government to endeavor in achieving objectives enshrined in the Constitution.

Therefore, in the light of achieving these objectives, sharing the water of the inter – State rivers plays significant role. Hence, it is necessary to share the waters of inter – State rivers equitably. In a case, if dispute arises, then, it is necessary to resolve it amicably. By referring to the Constitution, it can be understood that, there are certain provisions which are needed to be investigated. In this concept, the provisions in regards to the disputes relating to the sharing on inter – State river waters need to be interpreted.

Water is the important ingredient in order to achieve the development and maintenance of the environment. Therefore, water must be utilized in such a way that, it shall not favor one and harm another territory. In India most of the rivers travel through more than one State before emptying into Sea. In this event, the dispute may arise. Considering India is a federal country and need to follow co-operative federalism, it is necessary to resolve conflicts in relation to the sharing of inter State river waters amicably. In this regards, let us see the provisions under Constitution.

In relation to the law making power between the Parliament and Legislatures of the State, it is necessary to refer Legislative Relations provided in the Chapter I of the Part XI of the Constitution provided from Articles 245 to 255. Accordingly, the Article 245, provides, "extent of laws made by the Parliament and by the State Legislatures."<sup>17</sup> Article 246, provides, those subject matters by which law can be made by Parliament and State Legislature. It conferred exclusive power of making laws to the Parliament and the Legislatures of State on those subject matters provided in the List I, List II and List III, i.e. Union List, State List and Concurrent List respectively, of the Schedule VII of the Constitution.

The Parliament can make laws exclusively from subject matters mentioned in the Union List. The Legislatures of the each State can make laws from subject matters from the State List.

In addition, the subject matters from the Concurrent List are those subjects on which both the Parliament and the State Legislatures can make laws.<sup>18</sup> As discussed above, Parliament can make laws on the subject matter in regards to the entry No. 56 of the Union List in relation to the inter – State rivers and river valleys.<sup>19</sup> The Parliament may make laws in the interest of public in relation to inter – State river and river valley for its regulation and development and declare that it shall remain under the control of Union. Further, the Legislatures of State may make laws on the subject matter mentioned in entry No. 17 of the State List in rela-

tion to the water supplies, subject to entry No. 56 of the Union List.<sup>20</sup>

As discussed earlier, the river water always remains in the state of flow. It is the settled principle that, no State can claim its exclusive right over the flowing water. The limit over the competency of the State Legislature is that, they can not make laws beyond its territory.<sup>21</sup>

Article 262 confers the power to the Parliament to make laws in relation to the use, distribution or control of river waters and provide for its adjudication. Therefore, it can be said that, the Parliament has power to provide for adjudication of any complaint received by any State in relation to the sharing of inter State river waters. This adjudication may be done by any other authority other than Supreme Court or any other court.<sup>22</sup> This provision is the prevailing provision, irrespective of any provision provided in the Constitution, the Parliament may confirm jurisdiction of adjudication of inter – State river waters dispute to any other authority. Accordingly, the Government of India has constituted number of Tribunals for adjudication of dispute of sharing of waters of inter – State rivers. In this concern and in response to the Article 262, the legislation legislated in India by the Parliament, namely – The Inter – State River Water Disputes Act, 1956. In this concept let us discuss the said Act.

### 7. THE INTER – STATE RIVER WATER DISPUTES ACT, 1956:

Article 262 has conferred the power to the Parliament to enact the laws with regards to dispute relating to waters for its adjudication. Accordingly, the said Act is enacted by the Parliament. In relation to the inter – State river waters if any dispute<sup>23</sup> arises between two or more States, the Act has provided a forum for its adjudication.

The procedure is that, an aggrieved State Government may file a complaint with the Central Government<sup>24</sup> requesting them to refer the dispute of sharing of inter – State river waters to the Tribunals.<sup>25</sup> In a case, if dispute arises in relation to the river waters, then it can be referred to the Central Government by the aggrieved State. When a complaint is received by the Central Government from an aggrieved State, they shall endeavor resolving the dispute by negotiations before constituting a Tribunal. If the CG comes to the conclusion that, the said dispute may not be settled through negotiations, then they may constitute a Water Dispute Tribunal. for example:- The Krishna Water Dispute Tribunal or The Cauvery Water Dispute Tribunal, etc.. It is the mandatory duty of the CG, under this law, to constitute a water dispute Tribunal within a period of one year from the date of the request made by the SG. The CG shall notify in the official Gazette of the Constitution of such Tribunal.<sup>26</sup> Once the Water Dispute Tribunal is constituted, the CG shall refer such dispute to the Tribunal for its adjudication. On reference of the water dispute to the Tribunal, it shall carry out investigation of such dispute referred to them for its adjudication. Such investigation on the dispute referred, thereof, shall be completed within three years from its reference. On unavoidable circumstances, the period may further be extended for two more years by the CG. On completion of an investigation, the Tribunal shall forward its report along with the facts and decision to the CG. On receipt of the report, the CG or the SG may further refer it back for further explanation or guidelines to the Tribunal for further consideration. After consideration on the point it was referred, it is the duty of the Tribunal to submit its further report to the CG. Such further report shall be submitted within a period of one year from the date of its reference. The further report shall include the reasons for its reference i.e. explanation or guidance on which it was referred.<sup>27</sup> The decision made by the Tribunal shall be final. It has same force of a decree of the Supreme Court.

Under the law, the decision made by the Tribunal is final, therefore, it is necessary to give effect to the award. It is the duty of the CG to frame a scheme to give effect to the award passed by the Tribunal. But, if the water dispute has been referred to the Arbitrator under the River Boards act, 1956, then such dispute is barred to refer it to the Tribunal.

### 8. CONCLUSION:

Water is such an important substance by which every living organism survives. Therefore, it is necessary to handle diligently. The river which flows from more than one State, the water of it must be apportioned, in such a way that, everybody must utilize it to fulfill their goals. When inter – State river travels from more than one State and the upstream State utilizes its water to maximum extent, irrespective of its consequences on downstream State, it might disturb the federalism. In order to protect the federalism it is necessary to carry out the apportionment of river water in equitable manner. In a case if the dispute of water arises, then, there must be machinery exists for its adjudication. Considering the importance of sharing of river waters in the federal Country, the Constitution has empowered Parliament to make laws in relation to inter State river waters and provide a forum for adjudication of any such dispute. Accordingly, the Parliament has made laws and provided a provision to establish a forum for adjudication of disputes. After receipt of the complaint made by the aggrieved State, it is the mandatory duty of the CG to settle the dispute through negotiations. If the negotiation fails, then the CG may constitute a Tribunal and refer such dispute to them for adjudication. The Tribunal shall carry out investigation and submit their report to the CG including the facts and decision on the matter referred to them for adjudication. The award made by the Tribunal has a force of a decree of the Supreme Court which is binding on the parties. Therefore, it is advisable to follow the principle of equitable apportionment in order to maintain amicable relationship

between the States.

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